

AMENDED IN SENATE JANUARY 9, 2006
AMENDED IN SENATE SEPTEMBER 2, 2005
AMENDED IN SENATE JUNE 21, 2005
AMENDED IN ASSEMBLY APRIL 6, 2005
AMENDED IN ASSEMBLY MARCH 29, 2005
CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL**No. 424**

Introduced by Assembly Member Calderon
(Principal coauthor: Senator Alquist)

February 15, 2005

An act to amend Sections 530.5, 530.6, and 530.8 of the Penal Code, relating to crime, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 424, as amended, Calderon. Identity theft.

Existing law provides that every person who willfully obtains personal identifying information about another person, as defined, and uses that information for any unlawful purpose is guilty of a crime. Existing law provides a procedure for a person to initiate an investigation of potential identity theft. Existing law also provides that any person, upon discovering that in the person's name an unauthorized individual has made an application for certain services or has opened certain accounts, is entitled to receive the identifying information that was used by the unauthorized individual to apply for any service or open any account, upon the presentation of a copy of a police report and identifying information.

This bill would expand the definition of “personal identifying information” to include an equivalent form of identification. This bill would provide that “person” as used in these provisions includes a firm, association, organization, partnership, business trust, company, corporation, limited liability company, or public entity. By expanding the scope of an existing crime, this bill imposes a state-mandated local program.

~~Existing law provides that every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information of another person is punishable by imprisonment in a county jail for a period not to exceed one year, or a fine not to exceed \$1,000, or by both that imprisonment and fine.~~

~~This bill would provide that a violation of these provisions with respect to the personal identifying information of a person who is either a member of the armed forces, or is a member of the armed forces reserve or the National Guard, who has been called to active duty or active service and is deployed to a location outside of the state, as specified, is punishable by imprisonment in a county jail for one year, a fine not to exceed \$1,500, or by both that imprisonment and fine.~~

~~Because this bill would create a new crime, it would impose a state-mandated local program.~~

~~This bill would incorporate additional changes in Section 530.5 of the Penal Code proposed by AB 1566 that would become operative only if AB 1566 and this bill are both chaptered and become effective on or before January 1, 2006, and this bill is chaptered last.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 530.5 of the Penal Code is amended to~~
2 ~~read:~~

3 ~~530.5. (a) Every person who willfully obtains personal~~
4 ~~identifying information, as defined in subdivision (b), of another~~
5 ~~person, and uses that information for any unlawful purpose,~~
6 ~~including to obtain, or attempt to obtain, credit, goods, services,~~
7 ~~or medical information in the name of the other person without~~
8 ~~the consent of that person, is guilty of a public offense, and upon~~
9 ~~conviction therefor, shall be punished either by imprisonment in~~
10 ~~a county jail not to exceed one year, a fine not to exceed one~~
11 ~~thousand dollars (\$1,000), or both that imprisonment and fine, or~~
12 ~~by imprisonment in the state prison, a fine not to exceed ten~~
13 ~~thousand dollars (\$10,000), or both that imprisonment and fine.~~

14 ~~(b) "Personal identifying information," as used in this section,~~
15 ~~means the name, address, telephone number, health insurance~~
16 ~~identification number, taxpayer identification number, school~~
17 ~~identification number, state or federal driver's license number, or~~
18 ~~identification number, social security number, place of~~
19 ~~employment, employee identification number, mother's maiden~~
20 ~~name, demand deposit account number, savings account number,~~
21 ~~checking account number, PIN (personal identification number)~~
22 ~~or password, alien registration number, government passport~~
23 ~~number, date of birth, unique biometric data including~~
24 ~~fingerprint, facial scan identifiers, voiceprint, retina or iris image,~~
25 ~~or other unique physical representation, unique electronic data~~
26 ~~including identification number, address, or routing code,~~
27 ~~telecommunication identifying information or access device,~~
28 ~~information contained in a birth or death certificate, credit card~~
29 ~~number of a person, or an equivalent form of identification.~~

30 ~~(c) In any case in which a person willfully obtains personal~~
31 ~~identifying information of another person, uses that information~~
32 ~~to commit a crime in addition to a violation of subdivision (a),~~
33 ~~and is convicted of that crime, the court records shall reflect that~~
34 ~~the person whose identity was falsely used to commit the crime~~
35 ~~did not commit the crime.~~

36 ~~(d) Every person who, with the intent to defraud, acquires,~~
37 ~~transfers, or retains possession of the personal identifying~~
38 ~~information, as defined in subdivision (b), of another person is~~

1 guilty of a public offense, and upon conviction therefor, shall be
2 punished by imprisonment in a county jail not to exceed one
3 year, or a fine not to exceed one thousand dollars (\$1,000), or by
4 both that imprisonment and fine.

5 (e) For purposes of this section, “person” means a natural
6 person, firm, association, organization, partnership, business
7 trust, company, corporation, limited liability company, or public
8 entity.

9 SEC. 1.5. Section 530.5 of the Penal Code is amended to
10 read:

11 530.5. (a) Every person who willfully obtains personal
12 identifying information, as defined in subdivision (b), of another
13 person, and uses that information for any unlawful purpose,
14 including to obtain, or attempt to obtain, credit, goods, services,
15 or medical information in the name of the other person without
16 the consent of that person, is guilty of a public offense, and upon
17 conviction therefor, shall be punished either by imprisonment in
18 a county jail not to exceed one year, a fine not to exceed one
19 thousand dollars (\$1,000), or both that imprisonment and fine, or
20 by imprisonment in the state prison, a fine not to exceed ten
21 thousand dollars (\$10,000), or both that imprisonment and fine.

22 (b) “Personal identifying information,” as used in this section,
23 means the name, address, telephone number, health insurance
24 identification number, taxpayer identification number, school
25 identification number, state or federal driver’s license number, or
26 identification number, social security number, place of
27 employment, employee identification number, mother’s maiden
28 name, demand deposit account number, savings account number,
29 checking account number, PIN (personal identification number)
30 or password, alien registration number, government passport
31 number, date of birth, unique biometric data including
32 fingerprint, facial scan identifiers, voiceprint, retina or iris image,
33 or other unique physical representation, unique electronic data
34 including identification number, address, or routing code,
35 telecommunication identifying information or access device,
36 information contained in a birth or death certificate, credit card
37 number of a person, or an equivalent form of identification.

38 (c) In any case in which a person willfully obtains personal
39 identifying information of another person, uses that information
40 to commit a crime in addition to a violation of subdivision (a),

1 and is convicted of that crime, the court records shall reflect that
2 the person whose identity was falsely used to commit the crime
3 did not commit the crime.

4 (d) Every person who, with the intent to defraud, acquires,
5 transfers, or retains possession of the personal identifying
6 information, as defined in subdivision (b), of another person is
7 guilty of a public offense, and upon conviction therefor, shall be
8 punished by imprisonment in a county jail not to exceed one
9 year, or a fine not to exceed one thousand dollars (\$1,000), or by
10 both that imprisonment and fine.

11 (e) Every person who, with the intent to defraud, acquires,
12 transfers, or retains possession of the personal identifying
13 information, as defined in subdivision (b), of another person who
14 is deployed to a location outside of the state is guilty of a public
15 offense, and upon conviction therefor, shall be punished by
16 imprisonment in a county jail not to exceed one year, or a fine
17 not to exceed one thousand five hundred dollars (\$1,500), or by
18 both that imprisonment and fine.

19 (f) For purposes of this section, “deployed” means that the
20 person has been ordered to serve temporary military duty during
21 a period when a presidential executive order specifies that the
22 United States is engaged in combat or homeland defense and he
23 or she is either a member of the armed forces, or is a member of
24 the armed forces reserve or the National Guard, who has been
25 called to active duty or active service. It does not include
26 temporary duty for the sole purpose of training or processing or a
27 permanent change of station.

28 (g) For purposes of this section, “person” means a natural
29 person, firm, association, organization, partnership, business
30 trust, company, corporation, limited liability company, or public
31 entity.

32 *SECTION 1. Section 530.5 of the Penal Code is amended to*
33 *read:*

34 530.5. (a) Every person who willfully obtains personal
35 identifying information, as defined in subdivision (b), of another
36 person, and uses that information for any unlawful purpose,
37 including to obtain, or attempt to obtain, credit, goods, services,
38 or medical information in the name of the other person without
39 the consent of that person, is guilty of a public offense, and upon
40 conviction therefor, shall be punished either by imprisonment in

1 a county jail not to exceed one year, a fine not to exceed one
2 thousand dollars (\$1,000), or both that imprisonment and fine, or
3 by imprisonment in the state prison, a fine not to exceed ten
4 thousand dollars (\$10,000), or both that imprisonment and fine.

5 (b) “Personal identifying information,” as used in this section,
6 means the name, address, telephone number, health insurance
7 identification number, taxpayer identification number, school
8 identification number, state or federal driver’s license number, or
9 identification number, social security number, place of
10 employment, employee identification number, mother’s maiden
11 name, demand deposit account number, savings account number,
12 checking account number, PIN (personal identification number)
13 or password, alien registration number, government passport
14 number, date of birth, unique biometric data including
15 fingerprint, facial scan identifiers, voice print, retina or iris
16 image, or other unique physical representation, unique electronic
17 data including identification number, address, or routing code,
18 telecommunication identifying information or access device,
19 information contained in a birth or death certificate, or credit card
20 number of ~~an individual~~ a person, *or an equivalent form of*
21 *identification.*

22 (c) In any case in which a person willfully obtains personal
23 identifying information of another person, uses that information
24 to commit a crime in addition to a violation of subdivision (a),
25 and is convicted of that crime, the court records shall reflect that
26 the person whose identity was falsely used to commit the crime
27 did not commit the crime.

28 (d) Every person who, with the intent to defraud, acquires,
29 transfers, or retains possession of the personal identifying
30 information, as defined in subdivision (b), of another person is
31 guilty of a public offense, and upon conviction therefor, shall be
32 punished by imprisonment in a county jail not to exceed one
33 year, or a fine not to exceed one thousand dollars (\$1,000), or by
34 both that imprisonment and fine.

35 (e) Every person who, with the intent to defraud, acquires,
36 transfers, or retains possession of the personal identifying
37 information, as defined in subdivision (b), of another person who
38 is deployed to a location outside of the state is guilty of a public
39 offense, and upon conviction therefor, shall be punished by
40 imprisonment in a county jail not to exceed one year, or a fine

1 not to exceed one thousand five hundred dollars (\$1,500), or by
2 both that imprisonment and fine.

3 (f) For purposes of this section, “deployed” means that the
4 person has been ordered to serve temporary military duty during
5 a period when a presidential executive order specifies that the
6 United States is engaged in combat or homeland defense and he
7 or she is either a member of the armed forces, or is a member of
8 the armed forces reserve or the National Guard, who has been
9 called to active duty or active service. It does not include
10 temporary duty for the sole purpose of training or processing or a
11 permanent change of station.

12 (g) *For purposes of this section, “person” means a natural*
13 *person, firm, association, organization, partnership, business*
14 *trust, company, corporation, limited liability company, or public*
15 *entity.*

16 SEC. 2. Section 530.6 of the Penal Code is amended to read:

17 530.6. (a) A person who has learned or reasonably suspects
18 that his or her personal identifying information has been
19 unlawfully used by another, as described in subdivision (a) of
20 Section 530.5, may initiate a law enforcement investigation by
21 contacting the local law enforcement agency that has jurisdiction
22 over his or her actual residence or place of business, which shall
23 take a police report of the matter, provide the complainant with a
24 copy of that report, and begin an investigation of the facts. If the
25 suspected crime was committed in a different jurisdiction, the
26 local law enforcement agency may refer the matter to the law
27 enforcement agency where the suspected crime was committed
28 for further investigation of the facts.

29 (b) A person who reasonably believes that he or she is the
30 victim of identity theft may petition a court, or the court, on its
31 own motion or upon application of the prosecuting attorney, may
32 move, for an expedited judicial determination of his or her
33 factual innocence, where the perpetrator of the identity theft was
34 arrested for, cited for, or convicted of a crime under the victim’s
35 identity, or where a criminal complaint has been filed against the
36 perpetrator in the victim’s name, or where the victim’s identity
37 has been mistakenly associated with a record of criminal
38 conviction. Any judicial determination of factual innocence made
39 pursuant to this section may be heard and determined upon
40 declarations, affidavits, police reports, or other material, relevant,

1 and reliable information submitted by the parties or ordered to be
2 part of the record by the court. Where the court determines that
3 the petition or motion is meritorious and that there is no
4 reasonable cause to believe that the victim committed the offense
5 for which the perpetrator of the identity theft was arrested, cited,
6 convicted, or subject to a criminal complaint in the victim's
7 name, or that the victim's identity has been mistakenly associated
8 with a record of criminal conviction, the court shall find the
9 victim factually innocent of that offense. If the victim is found
10 factually innocent, the court shall issue an order certifying this
11 determination.

12 (c) After a court has issued a determination of factual
13 innocence pursuant to this section, the court may order the name
14 and associated personal identifying information contained in
15 court records, files, and indexes accessible by the public deleted,
16 sealed, or labeled to show that the data is impersonated and does
17 not reflect the defendant's identity.

18 (d) A court that has issued a determination of factual
19 innocence pursuant to this section may at any time vacate that
20 determination if the petition, or any information submitted in
21 support of the petition, is found to contain any material
22 misrepresentation or fraud.

23 (e) The Judicial Council of California shall develop a form for
24 use in issuing an order pursuant to this section.

25 (f) For purposes of this section, "person" means a natural
26 person, firm, association, organization, partnership, business
27 trust, company, corporation, limited liability company, or public
28 entity.

29 SEC. 3. Section 530.8 of the Penal Code is amended to read:

30 530.8. (a) If a person discovers that an application in his or
31 her name for a loan, credit line or account, credit card, charge
32 card, public utility service, mail receiving or forwarding service,
33 office or desk space rental service, or commercial mobile radio
34 service has been filed with any person or entity by an
35 unauthorized person, or that an account in his or her name has
36 been opened with a bank, trust company, savings association,
37 credit union, public utility, mail receiving or forwarding service,
38 office or desk space rental service, or commercial mobile radio
39 service provider by an unauthorized person, then, upon
40 presenting to the person or entity with which the application was

1 filed or the account was opened a copy of a police report
2 prepared pursuant to Section 530.6 and identifying information in
3 the categories of information that the unauthorized person used to
4 complete the application or to open the account, the person, or a
5 law enforcement officer specified by the person, shall be entitled
6 to receive information related to the application or account,
7 including a copy of the unauthorized person's application or
8 application information and a record of transactions or charges
9 associated with the application or account. Upon request by the
10 person in whose name the application was filed or in whose name
11 the account was opened, the person or entity with which the
12 application was filed shall inform him or her of the categories of
13 identifying information that the unauthorized person used to
14 complete the application or to open the account. The person or
15 entity with which the application was filed or the account was
16 opened shall provide copies of all paper records, records of
17 telephone applications or authorizations, or records of electronic
18 applications or authorizations required by this section, without
19 charge, within 10 business days of receipt of the person's request
20 and submission of the required copy of the police report and
21 identifying information.

22 (b) Any request made pursuant to subdivision (a) to a person
23 or entity subject to the provisions of Section 2891 of the Public
24 Utilities Code shall be in writing and the requesting person shall
25 be deemed to be the subscriber for purposes of that section.

26 (c) (1) Before a person or entity provides copies to a law
27 enforcement officer pursuant to subdivision (a), the person or
28 entity may require the requesting person to submit a signed and
29 dated statement by which the requesting person does all of the
30 following:

31 (A) Authorizes disclosure for a stated period.

32 (B) Specifies the name of the agency or department to which
33 the disclosure is authorized.

34 (C) Identifies the types of records that the requesting person
35 authorizes to be disclosed.

36 (2) The person or entity shall include in the statement to be
37 signed by the requesting person a notice that the requesting
38 person has the right at any time to revoke the authorization.

39 (d) (1) A failure to produce records pursuant to subdivision
40 (a) shall be addressed by the court in the jurisdiction in which the

1 victim resides or in which the request for information was issued.
2 At the victim's request, the Attorney General, the district
3 attorney, or the prosecuting city attorney may file a petition to
4 compel the attendance of the person or entity in possession of the
5 records, as described in subdivision (a), and order the production
6 of the requested records to the court. The petition shall contain a
7 declaration from the victim stating when the request for
8 information was made, that the information requested was not
9 provided, and what response, if any, was made by the person or
10 entity. The petition shall also contain copies of the police report
11 prepared pursuant to Section 530.6 and the request for
12 information made pursuant to this section upon the person or
13 entity in possession of the records, as described in subdivision
14 (a), and these two documents shall be kept confidential by the
15 court. The petition and copies of the police report and the
16 application shall be served upon the person or entity in
17 possession of the records, as described in subdivision (a). The
18 court shall hold a hearing on the petition no later than 10 court
19 days after the petition is served and filed. The court shall order
20 the release of records to the victim as required pursuant to this
21 section.

22 (2) In addition to any other civil remedy available, the victim
23 may bring a civil action against the entity for damages, injunctive
24 relief or other equitable relief, and a penalty of one hundred
25 dollars (\$100) per day of noncompliance, plus reasonable
26 attorneys' fees.

27 (e) For the purposes of this section, the following terms have
28 the following meanings:

29 (1) "Application" means a new application for credit or
30 service, the addition of authorized users to an existing account,
31 the renewal of an existing account, or any other changes made to
32 an existing account.

33 (2) "Commercial mobile radio service" means "commercial
34 mobile radio service" as defined in Section 20.3 of Title 47 of the
35 Code of Federal Regulations.

36 (3) "Law enforcement officer" means a peace officer as
37 defined by Section 830.1.

38 (4) "Person" means a natural person, firm, association,
39 organization, partnership, business trust, company, corporation,
40 limited liability company, or public entity.

1 SEC. 4. Section 1.5 of this bill incorporates amendments to
2 Section 530.5 of the Penal Code proposed by both this bill and
3 Assembly Bill 1566. It shall only become operative if (1) both
4 bills are enacted and become effective on or before January 1,
5 2006, (2) each bill amends Section 530.5 of the Penal Code, and
6 (3) this bill is enacted after Assembly Bill 1566, in which case
7 Section 1 of this bill shall not become operative.

8 SEC. 5. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the
13 penalty for a crime or infraction, within the meaning of Section
14 17556 of the Government Code, or changes the definition of a
15 crime within the meaning of Section 6 of Article XIII B of the
16 California Constitution.

17 *SEC. 6. This act is an urgency statute necessary for the*
18 *immediate preservation of the public peace, health, or safety*
19 *within the meaning of Article IV of the Constitution and shall go*
20 *into immediate effect. The facts constituting the necessity are:*

21 *In order to provide business in California with timely*
22 *protection from the growing problem of identity theft, it is*
23 *necessary that this bill take effect immediately.*